

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1901

AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-11-2-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 7.5. "Antique", for purposes of IC 13-20-17.5, refers to a product manufactured before 1980.**

SECTION 2. IC 13-11-2-58 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 58. (a) "District", for purposes of **IC 13-20-17.5**, IC 13-20-20, IC 13-21, and IC 13-20-22, refers to:

- (1) a county solid waste management district; or
- (2) a joint solid waste management district; established under IC 13-21-3-1 or IC 13-9.5-2-1 (before its repeal).
- (b) "District", for purposes of IC 13-26, refers to a regional water, sewage, or solid waste district established under:
 - (1) IC 13-26;
 - (2) IC 13-3-2 (before its repeal on July 1, 1996); or
 - (3) IC 19-3-1.1 (before its repeal on April 1, 1980).

SECTION 3. IC 13-11-2-126 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 126. (a) "Manufacturer", for purposes of IC 13-20-16, means a person who is engaged in the business of making lead acid batteries:

- (1) in Indiana; or

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(2) for sale in Indiana.

(b) "Manufacturer", for purposes of IC 13-27.5, means a manufacturer in Indiana operating under standard industrial classification codes twenty (20) through thirty-nine (39) in the Standard Industrial Classification Manual of the United States Office of Management and Budget.

(c) "Manufacturer", for purposes of IC 13-20-17.5, means any individual, corporation, limited liability company, partnership, trust, estate, or unincorporated association that:

- (1) produces in the United States a mercury-added product that does not consist of multiple components produced by separate entities;
- (2) is the last entity to produce or assemble in the United States a mercury-added product that consists of multiple components produced by separate entities; or
- (3) domestically distributes a mercury-added product produced in a foreign country.

SECTION 4. IC 13-11-2-128 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 128. "Material safety data sheet", for purposes of **IC 13-20-17.5** and IC 13-25-2, ~~means the data sheet developed under 29 CFR 1910.1200(g)~~ **has the meaning set forth in 42 U.S.C. 11049.**

SECTION 5. IC 13-11-2-128.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 128.3. "Mercury-added novelty", for purposes of IC 13-20-17.5, means a mercury-added product intended mainly for personal or household enjoyment or adornment, including:

- (1) items intended for use as practical jokes;
- (2) figurines;
- (3) adornments;
- (4) toys;
- (5) games;
- (6) cards;
- (7) ornaments;
- (8) yard statues and figurines;
- (9) candles;
- (10) jewelry;
- (11) holiday decorations; and
- (12) footwear and other items of apparel.

SECTION 6. IC 13-11-2-128.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



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[EFFECTIVE JULY 1, 2001]: **Sec. 128.5. (a) "Mercury-added product", for purposes of this chapter and IC 13-20-17.5, means:**

- (1) a product that contains:**
 - (A) elemental mercury;**
 - (B) metallic mercury in an alloy;**
 - (C) inorganic mercury salt; or**
 - (D) organic mercury;**

intentionally added by the manufacturer in order to provide a specific characteristic, appearance, or quality to the product or to perform a specific beneficial function for the product; or

(2) a product with a component that meets the criteria of subdivision (1).

(b) "Mercury-added product" does not include:

- (1) a product in which mercury is a residue from the intentional use of mercury in the manufacturing process, if the mercury residue does not:**
 - (A) provide a specific characteristic, appearance, or quality to the product; or**
 - (B) perform a specific beneficial function for the product; or**

(2) a mercury commodity.

SECTION 7. IC 13-11-2-128.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 128.6. "Mercury commodity", for purposes of this chapter and IC 13-20-17.5, means a product that consists of only mercury and its container (such as a container of mercury that is opened and from which mercury is put into a mercury-added product) if the mercury is not performing a specific beneficial function for the product.**

SECTION 8. IC 13-11-2-128.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 128.7. "Mercury fever thermometer", for purposes of IC 13-20-17.5, means a mercury-added product that:**

- (1) is a thermometer or another medical or scientific instrument; and**
- (2) is used for measuring body temperature.**

SECTION 9. IC 13-11-2-142.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 142.6. "Non-public school", for purposes of IC 13-20-17.5, has the meaning set forth in IC 20-10.1-1-3.**



SECTION 10. IC 13-11-2-158 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 158. (a) "Person", for purposes of:

- (1) IC 13-21;
- (2) air pollution control laws;
- (3) water pollution control laws; and
- (4) environmental management laws, except as provided in subsections (c), (d), (e), and (h);

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a municipal corporation, a city, a school city, a town, a school town, a school district, a school corporation, a county, any consolidated unit of government, political subdivision, state agency, a contractor, or any other legal entity.

(b) "Person", for purposes of:

- (1) IC 13-18-10; and
- (2) IC 13-20-17;

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a political subdivision, a state agency, or other legal entity, or their legal representative, agent, or assigns.

(c) "Person", for purposes of:

- (1) IC 13-20-13;
- (2) IC 13-20-14;
- (3) IC 13-20-16; and
- (4) IC 13-25-6;

means an individual, a corporation, a limited liability company, a partnership, or an unincorporated association.

(d) "Person", for purposes of IC 13-23, has the meaning set forth in subsection (a). The term includes a consortium, a joint venture, a commercial entity, and the United States government.

(e) "Person", for purposes of **IC 13-20-17.5** and IC 13-25-3, means an individual, a corporation, a limited liability company, a partnership, a trust, an estate, or an unincorporated association.

(f) "Person", for purposes of IC 13-26, means an individual, a firm, a partnership, an association, a limited liability company, or a corporation other than an eligible entity.

(g) "Person", for purposes of IC 13-29-1, means any individual, corporation, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, business enterprise, or legal entity.

(h) "Person", for purposes of:

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- (1) IC 13-30-6-6;
- (2) IC 13-30-6-7; and
- (3) IC 13-30-8-1;

has the meaning set forth in IC 35-41-1.

SECTION 11. IC 13-11-2-176.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 176.5. "Public school", for purposes of IC 13-20-17.5, has the meaning set forth in IC 20-10.1-1-2.**

SECTION 12. IC 13-11-2-180 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 180. "Recycling", for purposes of **IC 13-20-17.5 and** IC 13-21, means a process by which materials that would otherwise become solid waste are:

- (1) collected;
- (2) separated or processed; and
- (3) converted into materials or products for reuse or sale.

SECTION 13. IC 13-11-2-242 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 242. "Unit", for purposes of:

- (1) section 148(c) of this chapter;
- (2) IC 13-20-17.5;**
- ~~(2) (3)~~ **(3)** IC 13-20-20; and
- ~~(3) (4)~~ **(4)** IC 13-23;

has the meaning set forth in IC 36-1-2-23.

SECTION 14. IC 13-11-2-256 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 256. "Wastewater", for purposes of IC 13-18-12 **and IC 13-20-17.5**, means the following:

- (1) Human excreta, water, scum, sludge, and sewage from sewage disposal systems, retained contents of wastewater holding tanks, or portable sanitary units.
- (2) Grease, fats, and retained wastes from grease traps or interceptors.
- (3) Wastes carried in liquid from ordinary living processes.
- (4) Incidental or accidental seepage from sewage disposal systems.

SECTION 15. IC 13-20-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 17.5. Mercury and Mercury Products

Sec. 1. This chapter does not apply to antiques.

Sec. 2. (a) This section does not apply to a mercury-added novelty if:



- (1) the novelty uses a mercury-added button cell battery to function; and
 - (2) the only mercury contained in the novelty is found in the mercury-added button cell battery.
- (b) After July 1, 2003, a mercury-added novelty may not be:
- (1) offered for final sale; or
 - (2) distributed for promotional purposes;

in Indiana if the offerer or distributor knows or has reason to know that the novelty contains mercury.

Sec. 3. (a) This section does not apply to a mercury thermometer or to a thermometer if:

- (1) the thermometer uses a mercury-added button cell battery; and
- (2) the only mercury contained in the thermometer is found in the mercury-added button cell battery.

(b) Except as provided in subsection (c), after July 1, 2003, a person may sell or supply a mercury fever thermometer to an individual only if:

- (1) the person is a pharmacist or a pharmacist's assistant working at a pharmacy; and
- (2) the thermometers are stored in such a manner that the pharmacist or the pharmacist's assistant must obtain the thermometer for the individual.

(c) A licensed practitioner of medicine may sell or supply a mercury fever thermometer to an individual.

Sec. 4. After July 1, 2003, a public school or nonpublic school may not use or purchase for use in a primary or secondary classroom:

- (1) a mercury commodity;
 - (2) mercury compounds; or
 - (3) mercury-added instructional equipment and materials;
- except measuring devices and thermometers for which no adequate substitute exists for use in laboratories.

Sec. 5. After July 1, 2003, a person may sell or provide a mercury commodity to another person in this state (other than for collection for recycling) only if:

- (1) the person selling or providing the mercury commodity provides a material safety data sheet with the mercury commodity; and
- (2) the person selling or providing the mercury commodity requires the purchaser or recipient to sign a statement with respect to the mercury in the mercury commodity that the

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purchaser or recipient:

(A) will use the mercury only:

- (i) for medical purposes;**
- (ii) in dental amalgam dispose-caps;**
- (iii) for training;**
- (iv) for research; or**
- (v) for manufacturing purposes;**

(B) understands that mercury is toxic;

(C) will store and use the mercury appropriately so that no individual is exposed to the mercury under normal conditions of use; and

(D) will not intentionally:

- (i) place or cause to be placed; or**
- (ii) allow anyone under the control of the purchaser or recipient to place or cause to be placed;**

the mercury commodity in solid waste for disposal or in a wastewater disposal system.

Sec. 6. (a) The department, and districts in cooperation and with the support of the department, shall implement education programs to provide information to the public concerning:

(1) the reuse and recycling of mercury in:

- (A) mercury commodities; and**
- (B) mercury-added products; and**

(2) collection programs available to the public for:

- (A) mercury commodities; and**
- (B) mercury-added products.**

(b) Units, in cooperation and with the support of the department, may implement education programs to provide information to the public concerning:

(1) the reuse and recycling of mercury in:

- (A) mercury commodities; and**
- (B) mercury-added products; and**

(2) collection programs available to the public for:

- (A) mercury commodities; and**
- (B) mercury-added products.**

Sec. 7. (a) Districts shall implement mercury collection programs for the public and small businesses.

(b) Units may implement mercury collection programs for the public and small businesses.

SECTION 16. IC 13-21-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. Except as provided in section 14.5 of this chapter, the powers of a district include the

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following:

- (1) The power to develop and implement a district solid waste management plan under IC 13-21-5.
 - (2) The power to impose district fees on the final disposal of solid waste within the district under IC 13-21-13.
 - (3) The power to receive and disburse money, if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.
 - (4) The power to sue and be sued.
 - (5) The power to plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for solid waste management.
 - (6) The power to enter with any person into a contract or an agreement that is necessary or incidental to the management of solid waste. Contracts or agreements that may be entered into under this subdivision include those for the following:
 - (A) The design, construction, operation, financing, ownership, or maintenance of facilities by the district or any other person.
 - (B) The managing or disposal of solid waste.
 - (C) The sale or other disposition of materials or products generated by a facility.
- Notwithstanding any other statute, the maximum term of a contract or an agreement described in this subdivision may not exceed forty (40) years.
- (7) The power to enter into agreements for the leasing of facilities in accordance with IC 36-1-10 or IC 36-9-30.
 - (8) The power to purchase, lease, or otherwise acquire real or personal property for the management or disposal of solid waste.
 - (9) The power to sell or lease any facility or part of a facility to any person.
 - (10) The power to make and contract for plans, surveys, studies, and investigations necessary for the management or disposal of solid waste.
 - (11) The power to enter upon property to make surveys, soundings, borings, and examinations.
 - (12) The power to:
 - (A) accept gifts, grants, loans of money, other property, or services from any source, public or private; and
 - (B) comply with the terms of the gift, grant, or loan.
 - (13) The power to levy a tax within the district to pay costs of operation in connection with solid waste management, subject to the following:

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(A) Regular budget and tax levy procedures.

(B) Section 16 of this chapter.

However, except as provided in section 15 of this chapter, a property tax rate imposed under this article may not exceed eight and thirty-three hundredths cents (\$0.0833) on each one hundred dollars (\$100) of assessed valuation of property in the district.

(14) The power to borrow in anticipation of taxes.

(15) The power to hire the personnel necessary for the management or disposal of solid waste in accordance with an approved budget and to contract for professional services.

(16) The power to otherwise do all things necessary for the:

(A) reduction, management, and disposal of solid waste; and

(B) recovery of waste products from the solid waste stream;

if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.

(17) The power to adopt resolutions that have the force of law. However, a resolution is not effective in a municipality unless the municipality adopts the language of the resolution by ordinance or resolution.

(18) The power to do the following:

(A) Implement a household hazardous waste and conditionally exempt small quantity generator (as described in 40 CFR 261.5(a)) collection and disposal project.

(B) Apply for a household hazardous waste collection and disposal project grant under IC 13-20-20 and carry out all commitments contained in a grant application.

(C) Establish and maintain a program of self-insurance for a household hazardous waste and conditionally exempt small quantity generator (as described in 40 CFR 261.5(a)) collection and disposal project, so that at the end of the district's fiscal year the unused and unencumbered balance of appropriated money reverts to the district's general fund only if the district's board specifically provides by resolution to discontinue the self-insurance fund.

(D) Apply for a household hazardous waste project grant as described in IC 13-20-22-2 and carry out all commitments contained in a grant application.

(19) The power to enter into an interlocal cooperation agreement under IC 36-1-7 to obtain:

(A) fiscal;

(B) administrative;

(C) managerial; or

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- (D) operational;
services from a county or municipality.
- (20) The power to compensate advisory committee members for attending meetings at a rate determined by the board.
- (21) The power to reimburse board and advisory committee members for travel and related expenses at a rate determined by the board.
- (22) In a joint district, the power to pay a fee from district money to the counties in the district in which a final disposal facility is located.
- (23) The power to make grants or loans of:
- (A) money;
 - (B) property; or
 - (C) services;
- to public or private recycling programs, composting programs, or any other programs that reuse any component of the waste stream as a material component of another product, if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.
- (24) The power to establish by resolution a nonreverting capital fund. A district's board may appropriate money in the fund for:
- (A) equipping;
 - (B) expanding;
 - (C) modifying; or
 - (D) remodeling;
- an existing facility. Expenditures from a capital fund established under this subdivision must further the goals and objectives contained in a district's solid waste management plan. Not more than five percent (5%) of the district's total annual budget for the year may be transferred to the capital fund that year. The balance in the capital fund may not exceed twenty-five percent (25%) of the district's total annual budget. If a district's board determines by resolution that a part of a capital fund will not be needed to further the goals and objectives contained in the district's solid waste management plan, that part of the capital fund may be transferred to the district's general fund, to be used to offset tipping fees, property tax revenues, or both tipping fees and property tax revenues.
- (25) The power to conduct promotional or educational programs that include giving awards and incentives that further the district's solid waste management plan.
- (26) The power to conduct educational programs under**



IC 13-20-17.5 to provide information to the public concerning:

(A) the reuse and recycling of mercury in:

- (i) mercury commodities; and**
- (ii) mercury-added products; and**

(B) collection programs available to the public for:

- (i) mercury commodities; and**
- (ii) mercury-added products.**

(27) The power to implement mercury collection programs under IC 13-20-17.5 for the public and small businesses.

SECTION 17. [EFFECTIVE JULY 1, 2001] (a) Before January 1, 2004, the environmental quality service council shall:

- (1) review issues relating to the labeling and disposal of products that contain mercury;**
- (2) review issues relating to the notifications, restrictions on sales, and limitations on the use of elemental mercury under IC 13-20-17.5, as added by this act; and**
- (3) make legislative recommendations based on the reviews conducted under this SECTION, if appropriate.**

(b) This SECTION expires January 1, 2004.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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